

## SECOND ENROLLMENT

## COMMITTEE SUBSTITUTE

FOR

**H. B. 2663**

(By Delegates Moye, T. Campbell, Manchin, Shaver, Stephens, Barker, M. Poling and Doyle)

[Amended and again passed, in an effort to meet the objection of the Governor, March 18, 2011; in effect July 1, 2011.]

AN ACT to amend and reenact §11-13-3f of the Code of West Virginia, 1931, as amended be amended and reenacted; to amend and reenact §11-13F-1 of said code; to amend and reenact §11-24-11 of said code; to amend and reenact §24-1-3, §24-1-4 and §24-1-6 of said code; to amend and reenact §24-2A-2 of said code; to amend said code by adding thereto a new section, designated §24-2A-5; and to amend and reenact §24-3-2 of said code, all relating to the Public Service Commission; requiring at least one commissioner to be present at a hearing conducted for the sole purpose of receiving public comment or protest; requiring the commission establish a website for reception of public comments; allowing private water companies regulated by the Public Service Commission to offer discounted water services to qualified low-income customers; providing certain tax credits to private water companies extending such discounts to qualified low-income customers; adding cost of providing discounted water utility services by private water companies to qualified low-income residents to matters that the

1 commission must certify; placing the burden of proving  
2 eligibility to receive special reduced rates on the customer  
3 requesting the reduced rates; providing for the establishment  
4 of rules and procedures by the Public Service Commission to  
5 implement a reduced rate program for private water utilities  
6 and their qualified low-income residential customers;  
7 requiring the Department of Health and Human Resources to  
8 establish rules and procedures related to the special reduced  
9 water rate program and verifying applicants' eligibility to  
10 receive such discounts; providing for establishment of rules  
11 by the Tax Commissioner as necessary to implement said reduced  
12 rate program and its associated tax credits; and deleting  
13 obsolete language.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §11-13-3f of the Code of West Virginia, 1931, as amended  
16 be amended and reenacted; that §11-13F-1 be amended and reenacted;  
17 that §11-24-11 be amended and reenacted; that §24-1-3, §24-1-4 and  
18 §24-1-6 be amended and reenacted; that §24-2A-2 be amended and  
19 reenacted; that §24-3-2 be amended and reenacted; and that said  
20 code be amended by adding thereto a new section, designated §24-2A-  
21 5, all to read as follows:

22 **CHAPTER 11. TAXATION.**

23 **ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

24 **§11-13-3f. Tax credit for reducing electric, natural gas or water**  
25 **utility rates for low-income residential**  
26 **customers; regulations.**

27 (a) There shall be allowed as a credit against the tax imposed  
28 by this article, the cost of providing electric or natural gas or

1 water utility service, or any combination of electric, natural gas  
2 or water utility services, at reduced rates to qualified low-income  
3 residential customers which has not been reimbursed by any other  
4 means.

5 (b) The tax commissioner may prescribe such regulations as may  
6 be necessary to carry out the purposes of this section, of article  
7 thirteen-f of this chapter and of section eleven, article twenty-  
8 four of this chapter.

9 **ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING**  
10 **ELECTRIC, NATURAL GAS OR WATER UTILITY RATES FOR**  
11 **LOW-INCOME RESIDENTIAL CUSTOMERS.**

12 **§11-13F-1. Legislative Purpose.**

13 In order to reimburse public utilities for the revenue  
14 deficiencies that they incur in providing special reduced electric  
15 or natural gas or water utility rates to low-income residential  
16 customers in accordance with the provisions of article two-a of  
17 chapter twenty-four, there is hereby provided a business and  
18 occupation tax credit for reducing electric natural gas, or water  
19 utility rates for low-income residential customers.

20 **ARTICLE 24. CORPORATION NET INCOME TAX.**

21 **§11-24-11. Credit for reducing electric or natural gas or water**  
22 **utility rates for low-income residential customers.**

23 (a) General. -- A credit shall be allowed against the primary  
24 tax liability of an eligible taxpayer under this article for the  
25 cost of providing electric or natural gas or water utility service,  
26 or any combination of electric, natural gas or water utility  
27 services, at special reduced rates to qualified low-income  
28 residential customers which has not been reimbursed by any other

1 means.

2 (b) Definitions. -- For purposes of this section, the term:

3 (1) "Eligible taxpayer" means a utility which has provided  
4 electric or natural gas or water utility service, or any  
5 combination of electric, natural gas or water utility services, to  
6 qualified low-income residential customers at special reduced  
7 rates.

8 (2) "Cost of providing electric or natural gas or water  
9 utility service, or any combination of electric, natural gas or  
10 water utility services, at special reduced rates" means the amount  
11 certified by the public service commission under the provisions of  
12 section two, article two-a, chapter twenty-four of this Code, as  
13 the revenue deficiency incurred by a public utility in providing  
14 special reduced rates for electric or natural gas or water utility  
15 service, or any combination of electric, natural gas or water  
16 utility services, as required by section one or authorized by  
17 section five, article two-a, chapter twenty-four of this code.

18 (3) "Special reduced rates" means the rates ordered or  
19 approved by the public service commission under the authority of  
20 sections one or five, article two-a, chapter twenty-four of this  
21 code.

22 (4) "Qualified low-income residential customers" means those  
23 utility customers eligible to receive electric or natural gas or  
24 water utility service, or any combination of electric, natural gas  
25 or water utility services, under special reduced rates.

26 (c) Amount of credit. -- The amount of the credit available to  
27 any eligible taxpayer shall be equal to its cost of providing  
28 electric or natural gas or water utility service, or any

1 combination of electric, natural gas or water utility services, at  
2 special reduced rates to qualified residential customers, less any  
3 reimbursement of said cost which the taxpayer has received through  
4 any other means.

5 (d) When credit may be taken. -- An eligible taxpayer may  
6 claim a credit allowed under this section on its annual return for  
7 the taxable year in which it receives certification of the amount  
8 of its revenue deficiency from the public service commission.

9 Notwithstanding the provisions of section sixteen of this  
10 article to the contrary, no credit may be claimed on any  
11 declaration of estimated tax filed for such taxable year prior to  
12 the first day of July of such taxable year. Such credit may be  
13 claimed on a declaration or amended declaration filed on or after  
14 that date but only if the amount certified will not be recovered by  
15 application of the business and occupation tax credit allowed by  
16 section three-f, article thirteen of this chapter. In such event,  
17 only that amount not recovered by that credit may be considered or  
18 taken as a credit when estimating the tax due under this article.  
19 In no event may the eligible taxpayer recover more than one hundred  
20 percent of its revenue deficiency as certified by the public  
21 service commission.

22 (e) Application of credit. -- The credit allowable by this  
23 section for a taxable year is not subject to the fifty percent  
24 limitation specified in section nine of this article.  
25 Notwithstanding the provisions of section four, article thirteen-f  
26 of this chapter, any unused credit may be carried over and applied  
27 against business and occupation taxes in the manner specified in  
28 section five, article thirteen-f of this chapter.

1 (f) Copy of certification order. -- A copy of a certification  
2 order from the public service commission shall be attached to any  
3 annual return under this article on which a credit allowed by this  
4 section is taken.

5 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

6 **ARTICLE 1. GENERAL PROVISIONS.**

7 **§24-1-3. Commission continued; membership; chairman; compensation;**  
8 **quorum.**

9 (a) The Public Service Commission of West Virginia is  
10 continued and directed as provided by this chapter, chapter twenty-  
11 four-a, chapter twenty-four-b and chapter twenty-four-d of this  
12 code. The Public Service Commission may sue and be sued by that  
13 name.

14 (b) The Public Service Commission shall consist of three  
15 members who shall be appointed by the Governor, with the advice and  
16 consent of the Senate. The commissioners shall be citizens and  
17 residents of this state and at least one of them shall be duly  
18 licensed to practice law in West Virginia, with not less than ten  
19 years' actual work experience in the legal profession as a member  
20 of a State Bar.

21 (c) No more than two of the commissioners shall be members of  
22 the same political party.

23 (d) Each commissioner shall, before entering upon the duties  
24 of his or her office, take and subscribe to the oath provided by  
25 section five, article IV of the Constitution of this state. The  
26 oath shall be filed in the office of the Secretary of State.

27 (e) The Governor shall designate one of the commissioners to  
28 serve as chairman at the Governor's will and pleasure. The

chairman shall be the chief administrative officer of the commission. The Governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsections (g) and (h) of this section.

(f) Upon expiration of the terms, appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only.

(g) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter or holding any stocks or bonds of a public utility subject to the provisions of this chapter or who is pecuniarily interested in a public utility subject to the provisions of this chapter may serve as a member of the commission or as an employee of the commission.

(h) Nor may any commissioner be a candidate for or hold public office or be a member of any political committee while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the Governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(i) The annual salary of each commissioner provided in section two-a, article seven, chapter six of this code shall be paid in monthly installments from the special funds in the percentages that follow:

(1) From the Public Service Commission Fund collected under the provisions of section six, article three of this chapter, eighty percent;

(2) From the Public Service Commission Motor Carrier Fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seventeen percent; and

(3) From the Public Service Commission Gas Pipeline Safety Fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, three percent.

(j) In addition to the salary provided for all commissioners in section two-a, article seven, chapter six of this code, the chairman of the commission shall receive \$5,000 per annum to be paid in monthly installments from the Public Service Commission Fund collected under the provisions of section six, article three of this chapter.

**§24-1-4. Appointment, duties and compensation of secretary and other employees; hearings generally; public comment; outside employment by certain employees prohibited.**

The commission shall appoint a secretary and such other employees as may be necessary to carry out the provisions of this chapter and shall fix their respective salaries or compensations. It shall be the duty of the secretary to keep a full and true record of all proceedings, acts, orders and judgments of the commission, to issue all necessary process, returns and notices, to keep all books, maps, documents and papers ordered filed by the commission, and all orders made by the commission or approved and confirmed by it and ordered to be filed; and he shall be responsible to the commission for the safe custody and preservation



85 of all such documents in his office. He may administer oaths in  
86 all parts of the state, so far as the exercise of such power is  
87 properly incidental to the performance of his duty or that of the  
88 commission.

89 The commission may designate such of its employees as it deems  
90 necessary to hold hearings, held or required by this chapter, and  
91 to take evidence at such hearings, which employees are hereby  
92 empowered to subpoena witnesses, administer oaths, take testimony,  
93 require the production of documentary evidence and exercise such  
94 other powers and perform such other duties as may be delegated to  
95 them and required by the commission, in any proceeding or  
96 examination instituted or conducted by the commission under this  
97 chapter, at any designated place of hearing within the state.

98 The Commission shall provide a web site to accept comments  
99 from West Virginia residents regarding any matter under the  
100 auspices of the Commission or before the commission. The Commission  
101 staff shall report to the full commission all comments and  
102 suggestions received through the web site.

103 Any commissioner or person employed by the commission other  
104 than on a part-time basis shall devote full time to the performance  
105 of his duties as such commissioner or employee during the regular  
106 working hours as set by the commission.

107 **§24-1-6. Office of commission; time and place of hearings; number**  
108 **of commissioners required for taking action.**

109 The general office of the commission shall be kept at the seat  
110 of government and in charge of the secretary or his or her deputy.  
111 Hearings and the taking of evidence may be had at such times and  
112 places and in such manner in each particular case as the commission

may designate. If the sole purpose of the hearing is to receive public comment or protest, then not less than one commissioner is required to be present.

The concurrent judgment of two of the commissioners, when in session as the commission, shall be deemed the action of the commission, and a vacancy in the commission shall not affect the right or duty of the remaining commissioners to function as a commission.

**ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY AND GAS.**

**§24-2A-2. Recovery of revenue deficiencies.**

In order to provide the special reduced rates mandated or authorized by sections one and five of this article and still maintain the integrity of the earnings of the utilities offering service under these rates, the commission shall each year, determine, upon application by any affected utility, that utility's revenue deficiency resulting from the special reduced rates. Upon determining any utility's revenue deficiency, the commission shall issue an order certifying the amount of that deficiency. Certified revenue deficiencies shall be recovered by the affected utilities as follows:

(1) A utility's certified revenue deficiency, if any, resulting from the special reduced rates shall be allowed as a tax credit against the liability of the utility pursuant to the provisions of article thirteen-f of chapter eleven of this code.

(2) After allowance of a tax credit pursuant to the provisions of article thirteen-f of chapter eleven, a utility's remaining revenue deficiency, if any, resulting from the special reduced

rates, shall be allowed as a tax credit against the liability of the utility pursuant to the provisions of section eleven, article twenty-four of chapter eleven.

**§24-2A-5. Special rates for certain water utility customers.**

(a) The commission may authorize a privately owned water utility to voluntarily implement a rate design featuring reduced rates and charges for service for residential utility customers receiving:

- (1) Social Security Supplemental Security Income (SSI);
- (2) Temporary Assistance for Needy Families (TANF);
- (3) Temporary Assistance for Needy Families-Unemployed Parent Program (TANF-UP); or
- (4) assistance from the Supplemental Nutrition Assistance Program (SNAP) if they are sixty years of age or older.

(b) The special reduced rate offered by each water utility to its eligible customers shall be a percentage less, which shall be approved by the commission, than the rate that would be applicable to such customers if they were not receiving any of the four forms of assistance that confer eligibility for the special reduced rates approved by the commission: *Provided*, That such rate reduction shall not exceed twenty percent of the rate that would be otherwise applicable.

(c) Before any individual may qualify to receive the special reduced rates, the following requirements must be met:

- (1) The special reduced rates may apply only to current customers or to those persons who subsequently become customers in their own right. If an SSI, TANF, TANF-UP or SNAP recipient is living in a household that is served under the name of a person who

is not an SSI, TANF, TANF-UP or SNAP recipient, that service may not be changed or have been changed subsequent to July 1 , 2011, to the name of the SSI, TANF, TANF-UP or SNAP recipient in order to qualify for service under the special reduced rates.

(2) The burden of proving eligibility for the special reduced rates shall be on the customer requesting such rates. The Department of Health and Human Resources shall establish by rules and procedures:

(A) To inform persons receiving any of the four forms of assistance that confer eligibility for the special reduced rates about the availability of the special reduced rates;

(B) To assist applicants for the special reduced rates in proving their eligibility therefor; and

(C) To assist water utilities offering the special reduced rates in determining on a continuing basis the eligibility therefor of persons receiving or applying for such rates.

The commission shall establish rules and procedures for the application for and provision of service under the special reduced rates and for the determination and certification of revenue deficiencies resulting from the special reduced rates.

(3) In order to provide each eligible residential utility customer the special reduced rates, each utility providing the special reduced rates shall credit against amounts otherwise owed by each customer an amount equal to the difference between the total amount that each customer was actually billed during the previous month and the total amount that each customer would have been entitled to be billed under the special reduced rates. Each credit shall be fully reflected on the first bill issued to each

customer after approval of each customer's application for the special reduced rates, except in cases where the interval between the approval and the issuance of the next bill is so short that it is administratively impracticable to do so, in which case, such credits shall be fully reflected on the second bill issued to each customer after approval of that customer's application. If the interval between the approval and the issuance of the next bill is fifteen days or more, it may not be deemed administratively impracticable to reflect the credit on the customer's first bill.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.**

**§24-3-2. Discrimination prohibited.**

No public utility subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation, for any service rendered or to be rendered, than it charges, demands, collects, or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

It shall be unlawful for any public utility subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

225           Nothing in this section shall be construed to prevent the  
226 commission from:

227           (a) Authorizing or requiring any rate design consistent with  
228 the purposes and policies set forth in article two-a of this  
229 chapter; or

230           (b) Authorizing a private water utility to voluntarily  
231 implement a rate design featuring reduced rates and charges for  
232 service to qualifying low-income residential customers.